

APPEAL NO 010145

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 3, 2001. With regard to the issues before him, the hearing officer found that the respondent (claimant) sustained a compensable occupational disease injury in the form of a repetitive trauma on _____, which resulted in disability, and that the claimant did not report the injury to his employer within 30 days, but he had continuing good cause for not reporting the injury until March 13, 2000. The appellant (carrier) appealed, contending that the great weight and preponderance of the evidence establishes that the claimant did not have good cause for failure to report the injury within 30 days. The claimant urges affirmance. The hearing officer's decision on the issue of repetitive trauma injury has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The carrier asserts that there is insufficient evidence to support the factual findings made by the hearing officer as well as the conclusions of law from which they are based. Specifically, the carrier contends that the hearing officer erred in making the following findings of fact: that the claimant trivialized his injury until March 10, 2000; that the claimant acted with ordinary prudence in waiting until March 13, 2000, to give his employer notice of the injury; and that the claimant had continuing good cause in the nature of trivialization of his injury until March 10, 2000, and acted with ordinary prudence thereafter in reporting the injury to his employer on March 13, 2000.

Whether there was continuing good cause is generally a question of fact for the hearing officer to resolve. The hearing officer commented that neither the claimant "nor [the treating doctor] considered [the claimant's] problem serious as evidenced by the initial plan of treatment" It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's determination that the date of injury was _____, and that the claimant had continuing good cause in failing to report the injury until March 13, 2000, is supported by the evidence. The hearing officer found for the claimant on these disputed issues and such findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary Kilgore
Appeals Judge

Phillip O'Neill
Appeals Judge